IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 755 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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ASGARALI ABBASBHAI VORA

Versus

JETHIBEN WD/O C K PRAJAPATI

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Appearance:

1. Civil Revision Application No. 755 of 1991

MR RN SHAH for Petitioner No. 1

MR HR PRAJAPATI for Respondent No. 1-2

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CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 01/07/2004

ORAL JUDGEMENT

1. Heard learned Advocate Mr.R.N.Shah for the petitioner while learned Advocate for the respondents is

not present. This is a Revision Application preferred against an order passed by learned Extra Assistant Judge, Panchmahal at Godhra on 27th of March, 1991, dismissing the Appeal of present petitioner being Regular Appeal No. 11/87.

2. The facts in short are that the present petitioner filed Regular Civil Suit No.184/84 against present respondents under the Bombay Rent Act for eviction and for arrears of rent. It was stated that the defendants - present opponents were the owners of the suit premises and that the suit property was mortgaged to the petitioner by defendants (opponents herein) with possession of the property, and vide rent note dated 1st of December 1978, the same property was given to the defendants by the present petitioner on rent of Rs.100/-. Ultimately, a relief for eviction and for the arrears of rent was prayed, to which the present opponents original defendants contested and stated that the property was not owned by the defendants and was not mortgaged to the plaintiff with possession. On the contrary, the suit property was mortgaged by the husband of defendant No.1 and father of defendant No.2 by simple mortgage for Rs.5,000/-.

3. After recording of the evidence, both the courts below came to the conclusion that the owner of the suit property was deceased Prajapati Chunnilal Koyabhai and defendants being the heirs of deceased became co-owners, and the deceased Prajapati Chunnilal Koyabhai had taken Rs.1500/- from one Ismail Haji by executing mortgage deed placed on Exh.32 dated 2.6.1965, and thereafter some more amounts were also taken by the defendants on the suit property. The said mortgage thereafter was transferred in favour of plaintiff by Ismail Haji by Deed Exh.34 dated 7.9.1972. In this way, the plaintiff became mortgagee and therefore the question of possessory mortgage had never arisen.

4. Both the courts below on the question of fact came to the conclusion that when possessory mortgage was not proved on record, the defendants respondents remained in possession of the suit property from the beginning and never parted with the possession, and in those circumstances, the question of creation of relationship of landlord and tenant between the parties could never arise. The plaintiff present petitioner failed to prove possessory mortgage and discharge the onus shifted on him in this respect. All the other mortgage deeds produced on record indicated only simple mortgage and not possessory mortgage.

5. Thus, when both the courts below came to the conclusion that there was no proof of possessory mortgage and there was no evidence as to relationship of landlord and tenant between the parties, the question of eviction would not at all arise. The Civil Suit being Regular Civil Suit No. 184/84 of the Court of Civil Judge (SD), Dahod, came to be dismissed on this ground on 28.1.1987 while, as above said, Appeal filed by the plaintiff also came to be dismissed by Extra Assistant Judge, Panchmahals at Godhra on 27.3.1991.

6. No grounds at all made out by the petitioner to interfere with the concurrent findings of both the courts below and hence this Revision Application deserves to be dismissed.

7. Accordingly, this Revision Application stands dismissed. Rule is discharged. No order as to costs. Interim relief granted earlier shall stand vacated.

(J.R. Vora, J.)

p.n.nair